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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,087	01/29/2002	Haruko Toyoshima	0445-0315P	2505
2292	7590	12/29/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/058,087	Applicant(s) TOYOSHIMA, HARUKO	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Language Interpretation***

1. Lines 18-21 of claim 1 do not require the members be stretched from a nonstretched state to a stretched state and then fixed to the areas in the stretched state and then released from such state allowing contraction to the nonstretched state. These lines only require the fixing of a temporarily or permanently stretched material to the areas and the areas being able to contract due to the disposition of such stretched material. It is further noted that the claims do not require the under-waist portion positioned right below the waist opening portion and the areas extending outwardly from the absorbent be one and the same, i.e. coextensive, or the underwaist elastic members only being in the underwaist portion. It is further noted that lines 9-10 of claim 1 do not require direct attachment of the tapes to the underwaist portion, i.e. could be direct or indirect attachment. Finally it is noted that while the waist opening portion requires a continuous waist elastic member, such member is not required to be continuous with the entire waist portion, i.e. the member is continuous in some portion of the waist opening portion (Note the original filed Figures show a continuous elastic member in each of the front and rear portions of the waist opening portion, but such member does not span the entire front or rear portion, i.e. does not extend side edge to side edge in such portions). Nor is the elastic member required to be provided in the portion of the waist opening portion which is right above the under waist portion.

Claim Rejections - 35 USC § 102

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al '584, and thereby Buell et al '274.

See Figure 2, topsheet 24, backsheet 22, core 28, fastening tapes 92, landing zone 44, waist elastic member 34, under-waist members 90, leg elastic members 432. See also col. 14, lines 27-61, col. 15, line 16-col. 16, line 24 of Clear et al, and thereby Buell '274 at, e.g., col. 35, line 57-col. 36, line 30, especially col. 36, lines 2-5, i.e. the members 90 can be associated with the topsheet and backsheet in the tensioned condition, i.e. stretched state, col. 51, lines 3-64, esp. lines 56-64, Figure 1, col. 45, lines 23-30, col. 15, lines 16-27, col. 23, lines 13 et seq, col. 33, lines 51-53, col. 42, lines 44-52, col. 43, lines 14-38. It is also noted that 1N is about 150 gf.

Response to Arguments

3. Applicants remarks on pages 4-5 with regard to new matter have been noted but are deemed moot. Applicant's provisional request for an interview on page 18 has been noted. Applicants should contact the Examiner by phone to discuss the request. Note a PTO-413A would be required prior to such an interview. Applicants remarks on pages 5-16 incorporating the remarks of 9-8-03 have been noted. Since it is unclear from such remarks what rejection(s) Applicant is arguing, e.g. a rejection under 35 USC 102, under 103 or both and what references were used for such rejection, i.e. Clear and Buell or just Clear or just Buell, see, e.g., page 5, first full paragraph, the sentence bridging pages 5-6, page 11, first and second full paragraphs, page 12, lines 18-22, page 13, lines 7-11 and last four lines, page 15, lines 9-12 and page 16, last two paragraphs, and thereby, whether such address the applied prior art rejection based on 35 USC

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102 and Clear (and thus Buell by incorporation thereof), such remarks are still deemed nonpersuasive. The Examiner further repeats the response set forth in paragraph 7 of the 11-25-03 Office Action and paragraph 5 of the 7-22-04 Office Action.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

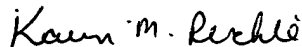
Any new grounds of rejection were necessitated by the amendments made to claim 1.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
December 22, 2004